



September 14, 2005

*Via electronic filing*

Marlene Dortch  
Commission Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**Re: *In the Matter of Petition of Qwest Corporation for Forbearance  
Pursuant to 47 U.S.C. § 160(c) in the Omaha MSA, WC Docket  
No. 04-223***

Dear Ms. Dortch:

The Commission is currently considering whether to relieve Qwest Corporation ("Qwest") of all or part of its obligations under sections 251(c) and 271 of the Communications Act of 1934, as amended,<sup>1</sup> in the Omaha Metropolitan Statistical Area. Integra Telecom, Inc. ("Integra") respectfully requests that the Commission deny Qwest's request because relieving Qwest of its obligation to provide unbundled loops and transport in the Omaha area would suppress, rather than encourage, competition to the detriment of residential and business consumers in Omaha. Such a decision would be inconsistent with the standards for forbearance that Congress set forth in 47 U.S.C. §160, including the requirement that forbearance must be "consistent with the public interest."

Integra is a facilities-based CLEC headquartered in Portland, Oregon that employs more than 600 people. Integra provides service, primarily to small and medium-sized businesses, in Oregon, Washington, Minnesota, North Dakota, and Utah. Integra holds a certificate to provide service in Nebraska but is not currently active in the state.

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<sup>1</sup> 47 U.S.C. § 251(c), 47 U.S.C. § 271.

However, Integra has closely watched the Omaha market for some time and is currently evaluating opportunities that would allow it to provide service in the Omaha area. If Integra were to undertake such an opportunity, small and medium-sized businesses in Omaha and its surrounding area would have an additional competitive choice for, among other things, their local, long distance, high-speed Internet and data services needs. (Exhibit A, Affidavit of Dudley Slater.)

However, the Commission's decision on Qwest's Petition would directly affect Integra's ability to enter the Omaha market. Although Integra is a facilities-based CLEC, it still is dependent on the dominant ILEC for loops to reach end users and some transport to get the telecommunication signal to its ultimate destination. In Omaha, the dominant ILEC is Qwest. Therefore, in order to provide service in Omaha consistent with its value proposition, Integra would need the ability to obtain loops and transport from Qwest at the TELRIC rates the Commission has mandated for unbundled network elements. Unfortunately, Qwest seeks to escape its obligations under federal law by claiming in its Petition that the Omaha area enjoys robust retail competition, primarily from Cox Communications, the local cable company. Qwest's Petition, however, tells only part of the story about competition in Omaha.

Qwest's Petition focuses on competition from Cox Communications for residential customers. But, in its Petition, Qwest only superficially addresses the market that Integra seeks to serve in Omaha – small and medium-sized business customers. As Integra demonstrated in its initial and reply comments in the Triennial Review Remand Order ("TRRO") proceeding<sup>2</sup> (attached hereto as Exhibits B and C incorporated herein by reference), cable companies like Cox do not typically serve business customers. The detailed, statistically valid survey that Integra commissioned from an independent outside vendor revealed that cable companies are not actual alternative providers for business customers within the five largest MSAs served by Integra. This is consistent with Integra's experience that small and medium-sized business customers in the markets that Integra serves rely virtually exclusively on wireline providers such as ILECs and CLECs to obtain vital telecommunications services. Therefore, Integra's market

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<sup>2</sup> *In the Matter of Unbundled Access to Network Elements/Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338.

research and actual experience directly refute Qwest's premise that cable companies provide vigorous retail competition for small and medium-sized business customers.<sup>3</sup>

Even if the Omaha market is different from Integra's current markets and Cox does in fact serve a meaningful segment of business customers, cable companies do not provide a wholesale alternative to Qwest in Omaha or anywhere else, even where they have a significant share of the retail market. The fact that a cable company may have a significant retail market share and significant infrastructure, even a network that duplicates the ILEC's network, has no impact on the wholesale market in that area unless the cable company is required to provide open access to its network. Cable companies like Cox Communications are not legally required to provide wholesale access to their networks. Integra has found that, in the markets it serves, cable companies do not voluntarily share their networks on a wholesale basis, and there is no reason to believe that the Omaha market is any different. (*See Exhibits A and B.*) Therefore, Cox Communications' market share and infrastructure in Omaha are irrelevant to whether wholesale competition exists in that market.

Because the Commission must consider whether forbearance "will promote competitive market conditions" and "enhance competition among providers of telecommunications services,"<sup>4</sup> it must consider the Petition's effect on the wholesale market. As described above, the cable company is not a viable wholesale alternative. Qwest's special access rates, assuming they are available, also are not an economically feasible wholesale alternative because they may be as much as 600 percent more than UNE rates. (Exhibit B at 6.) Therefore, without the ability to obtain loops and transport from Qwest on a wholesale basis at UNE rates, even facilities-based CLECs like Integra would be left with no viable wholesale alternative in Omaha.

The immediate consequence of granting Qwest's Petition would be to eliminate – before it even arrives – a new competitive choice in Omaha.

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<sup>3</sup> Integra acknowledges that its research and experience do not include the Omaha market. However, Integra's findings are consistent throughout the five major MSAs surveyed, which include Portland, Seattle, Tacoma, Salt Lake, and Minneapolis/St. Paul, which all include a dominant cable provider like Cox Communications. There is no reason to believe that the Omaha market is different from the markets included in Integra's survey.

<sup>4</sup> 47 U.S.C. §160(b).

Without UNE loops and transport from Qwest, Integra could not justify the substantial investment that would be required to enter the Omaha market. If the Commission grants Qwest's Petition, Integra would not be willing to invest the substantial capital to initiate competitive services in Omaha and would suspend our current plans to provide service in Omaha. (Slater Aff., ¶ 5.) Therefore, relieving Qwest of its wholesale obligations to provide loops and transport would not promote competitive market conditions; instead, such a decision would restrict and potentially eliminate competition in Omaha, to the detriment of consumers in that market. Accordingly, Integra respectfully requests that the Commission deny Qwest's Petition.

Sincerely,

*/s/ Jay Nusbaum*

Jay Nusbaum  
Associate Regulatory Attorney  
Integra Telecom, Inc.

JPN  
Encl.

Cc: Dudley Slater, Chief Executive Officer, Integra Telecom  
Karen Johnson, Corporate Regulatory Attorney, Integra Telecom

**EXHIBIT A**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

WC Docket No. 04-223

Petition of Qwest Corporation for  
Forbearance Pursuant to 47 U.S.C. §  
160(c) in the Omaha Metropolitan  
Statistical Area

Affidavit of Dudley Slater

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I, Dudley Slater, do hereby declare:

1. I am the Chief Executive Officer and co-founder of Integra Telecom, a facilities-based competitive local exchange carrier headquartered in Portland, Oregon.

2. Integra Telecom employs over 600 people in the five states in which it provides service – Oregon, Washington, Minnesota, North Dakota, and Utah.

3. Integra's primary market is small and medium-sized businesses. Integra provides, among other things, local, long distance, high-speed Internet and data services.

4. Although Integra holds a certificate to provide service in Nebraska, it does not currently provide service there. However, Integra has long sought opportunities that would allow it to enter the Omaha market. Integra currently is evaluating opportunities that would allow it to provide service in the Omaha area.

5. If Qwest is no longer required to provide loops and transport at UNE rates in all or part of the Omaha MSA, the investment to enter the market using special access rates or some other arrangement would be too great for Integra to justify. Integra would be unable to justify its current opportunity and would suspend its plans to provide service in the Omaha market.

*I declare under penalty of perjury under the laws of the United States of America that the foregoing is true.*

Dated this 14<sup>th</sup> day of September, 2005.

/s/ *Dudley Slater*

Dudley Slater